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April 13, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 20, 2006

Case Number: TSO-0414

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted access authorization. For the reasons detailed below, it is my decision that the Individual's access authorization should not be granted at this time.

I. BACKGROUND

The Individual applied for an access authorization, also referred to as a security clearance, under the DOE's Accelerated Access Authorization Program (AAAP) and completed a Questionnaire for National Security Positions (QNSP) in February 2005. DOE Ex. 9. The Individual indicated on the QNSP that he had not used any illegal drugs in the past seven years. *Id.* In connection with the AAAP, the Individual was interviewed by a psychologist ("the Psychologist") in June 2005. DOE Ex. 7. During that interview, the Individual discussed his extensive past use of alcohol and stated that he had not used any illegal drugs "during the past ten years." *Id.*

Following his interview with the Psychologist, the Individual participated in a Personnel Security Interview (PSI) in August 2005. DOE Ex. 10. During the PSI, the Individual again discussed his extensive alcohol use. *Id.* The Individual stated during the interview that he did not believe alcohol was a problem in his life, but indicated that he intended to decrease his overall alcohol consumption. *Id.*

In January 2006, the Individual was referred to a DOE consultant-psychiatrist ("the Psychiatrist") for an evaluation. DOE Ex. 6. During the interview, the Individual discussed his alcohol use. The Individual also disclosed to the Psychiatrist that he used marijuana one time in 2002 and had used marijuana 30 to 40 times in his past.

In his January 2006 report, the Psychiatrist determined that the Individual had been a user of alcohol habitually to excess and met the criteria for "Alcohol Dependence" set forth in the Diagnostic and Statistical Manual 4th Ed., Text Revision, published by the American Psychiatric

Association (the DSM-IV-TR). The Psychiatrist also determined that the Individual's alcohol dependence was an illness which "causes, or may cause, a significant defect in [the Individual's] judgment or reliability, at least until such time as he is showing adequate evidence of rehabilitation or reformation." *Id.* The Psychiatrist found that at the time of his interview the Individual was not showing adequate evidence of rehabilitation or reformation. The Psychiatrist concluded that as adequate evidence of rehabilitation or reformation, the Individual needed to demonstrate complete abstinence from alcohol and attendance at Alcoholics Anonymous (AA) or a similar program for at least two years. *Id.*

In April 2006, the DOE notified the Individual that his alcohol use, the Psychiatrist's diagnosis of Alcohol Dependence, the Individual's marijuana use, and the false answers on his 2005 QNSP and during his interview with the Psychologist created security concerns under 10 C.F.R. § 710.8 (f), (h), (j) and (k). (Criteria F, H, J and K). Notification Letter, April 19, 2006. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter and the DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Acting Director appointed me to serve as the hearing officer.

A hearing was held in this matter. Both the Individual and the DOE counsel submitted documents. At the hearing, the Individual did not dispute the facts contained in the Notification Letter or that those facts give rise to security concerns. Rather, the Individual presented his own testimony as well as the testimony of his long-time friend, his cousin, and his girlfriend to support his position that he was in the process of reforming and rehabilitating from his alcohol problem. The DOE counsel presented the testimony of one witness: the Psychiatrist.

II. THE HEARING

A. The Individual

Regarding the 2002 marijuana use, the Individual stated, "I did use marijuana back in 2002 and ... it was a stupid thing to do. I understand that. But ... I really don't have a problem with drugs." Tr. at 8. The Individual added, "It was just we were at a party, and ... I was intoxicated" Tr. at 11. He stated that he no longer socializes with people who use marijuana. Tr. at 50. The Individual stated that he had used marijuana in the past, but mostly in high school and college. Tr. at 9.

When asked why he disclosed the marijuana use to the Psychiatrist after keeping it from the Psychologist and not noting it on the QNSP, the Individual stated, "by the time I saw [the Psychiatrist], it had been a long time ... and I just felt it was time to really say everything." Tr. at 12. The Individual stated that he was not intentionally dishonest with DOE. He stated, "I really wasn't trying to hide anything. I wasn't trying to lie ... I told the truth about all my issues, and my biggest issue is with alcohol. I don't have an issue with drugs ... I'm not a drug addict." Tr. at 13-14. The Individual stated that he "didn't want anybody to get that feeling that [he's] a drug addict or that [he uses] drugs on a consistent basis." Tr. at 15. He concluded, "it was a stupid mistake." *Id.* He stated that in the future, he would report any similar incidents to DOE. He stated, "through my sobriety ... I don't feel as ashamed anymore, embarrassed about certain things ... I can be more open now." Tr. at 51. He stated that he gave the false answers because

he did “not have an issue with drugs.” Tr. at 8. He added that he was also “kind of embarrassed.” *Id.* He added, “I was kind of scared, you know, thought I was going to get into a lot of trouble, you know. That’s why I did that.” *Id.* The Individual stated that he also understood the question to refer to “whether [he is] a really consistent user of drugs ...” Tr. at 9.

The Individual further testified regarding his alcohol problem. The Individual stated that he stopped drinking in June 2006 and sought treatment for his alcohol problem in November 2006. Tr. at 16, 27. He stated that he was attending AA and counseling sessions. The Individual stated that he realized that alcohol had caused problems in his life, including his divorce. Tr. at 17. He stated, “I’m glad I quit, I’m glad I’m sober now ... I look back ... and the alcohol has really done bad for me, you know. My family, my life ... my health ... I feel real good now, I really do.” *Id.* The Individual stated that in previous years, he would always stop drinking alcohol from New Year’s Day until Easter. Tr. at 21. He stated that he stopped drinking alcohol altogether in June 2006. *Id.* The Individual stated that he realized that he needed to change his lifestyle. Tr. at 22. When asked why he quit drinking, the Individual stated,

At first, it was for the sake of my job ... and then as I started attending classes and stuff like that, I realized that, well this is a life thing. It’s a lifestyle change ... it’s to benefit my life. And so ... it kind of evolved into a different way of thinking. You know, this is not just for my job, this is not just for a clearance, this is for life, a better way of living. And I’ve learned that ... I’m really glad I quit. I feel my life is going good. You know, and I’m not depressed anymore ... I don’t feel anxiety, I’m not paranoid ... a lot of that stuff was with the alcohol. And I’m good. I feel good.

Tr. at 23. When asked why he felt this period of abstinence was different from the prior years when he resumed drinking after stopping for several months, the Individual stated, “the periods before, I had in my mind that I was always going to return to drinking, you know ... What’s different now is that I have in my mind that I’m not going to return back to drinking. I have given it up. It’s not part of my life anymore.” Tr. at 48.

The Individual discussed the treatment he was undergoing to address his alcohol problem. The Individual stated that he did not seek treatment until five months after he stopped drinking because he believed he would be able to remain abstinent without treatment. He stated, “I’ve quit in the past, so, you know those first four months were a breeze, but I do have to say that after, you know, four or five months ... the cravings are there” Tr. at 28. The Individual stated that he attends his counseling sessions three times per week. Tr. at 29. The Individual added that he has also been doing the Self-Management and Recovery Training (SMART) program on-line. Tr. at 31. He stated that he tries to attend AA meetings at least two times per week during his lunch hour, but that it has been difficult to go regularly because of his work schedule. He added that he intends to begin attending evening AA meetings closer to his home and begin working with a new sponsor there. Tr. at 30, 40-41. The Individual stated that he will continue going to AA “probably for life.” Tr. at 41.

The Individual stated that although he sometimes gets urges to drink alcohol, he controls the urges with the tools he has learned in his counseling sessions and the SMART program. He

stated that he also manages his recovery through prayer. Tr. at 42. The Individual stated that his friends and family are aware and supportive of his abstinence. Tr. at 43. He stated that his friends accept that he does not drink and that although they sometimes drink in front of him, they do not offer him alcohol. *Id.* He also stated that there is no alcohol in his home. *Id.*

The Individual stated that abstinence from alcohol has had a positive effect on his life. He stated that he is able to think more clearly, has a better outlook on life, and has an improved relationship with his children. Tr. at 45. According to the Individual, he is at the beginning of a lengthy process and needs more treatment to continue his recovery from his alcohol problem but does not believe alcohol will ever be a problem in his life again. Tr. at 45-46. The Individual stated that outside of work, he spends his time at his counseling sessions, with his children and family, or with his girlfriend. Tr. at 52. He stated that he enjoys fishing and working on restoring an old vehicle. *Id.* The Individual stated that he does not believe he will ever drink alcohol again. Tr. at 46. He also stated that he will never use illegal drugs again: "It is wrong. It's illegal. I don't condone it." *Id.*

B. The Individual's Friend

The Individual's friend stated that he has known the Individual for approximately 25 years and sees the Individual three to four times per week. Tr. at 54. The friend stated that he is aware of the Individual's abstinence from alcohol and his alcohol treatment. Tr. at 55. He stated that the Individual told him that he had quit drinking eight or nine months ago, but that he had not seen the Individual drink in "probably over a year." Tr. at 56-57. He stated that he did not believe the Individual had a problem with alcohol but supported his efforts and would discourage the Individual from drinking alcohol in the future. Tr. at 56, 61. The friend stated that the Individual spoke to him about the positive effects of his sobriety and that he (the friend) was "really impressed." Tr. at 58. The Individual's friend stated that he and the Individual spend time together restoring vehicles and jogging in the summer. Tr. at 62. He described the Individual as a good father who was "honest" and "family-oriented." Tr. at 60. The friend stated that the Individual was never dishonest with him, reliable, "very prompt" and had "always been there" for him. Tr. at 64-66. The friend stated that the Individual had never used illegal drugs in his presence and had never discussed any illegal drugs use with him. Tr. at 61. The friend added that he did not know whether the Individual had ever used any illegal drugs in the past. *Id.*

C. The Individual's Cousin

The Individual's cousin stated that he and the Individual grew up together and that he sees him one to two times per week. Tr. at 69, 79. The cousin stated that he and the Individual go hunting or fishing together and share an occasional dinner or barbecue. Tr. at 71. The cousin stated that it had been "a while, a few years" since he had seen the Individual drink and that the Individual told him that his last drink was "eight months to a year" ago. Tr. at 71, 73. The Individual's cousin stated that the Individual told him he was attending counseling sessions and AA and observed that the Individual "seems to be enjoying" it. Tr. at 73-74. The cousin stated that the Individual told him that he did not want drinking to be a part of his life anymore and that he was working to attain his clearance. Tr. at 74. He stated that he has noticed that the Individual is on

a “health beat” and is “exercising a lot” since he stopped drinking. Tr. at 77. The Individual’s cousin stated, “I’m pretty sure he wants to stay sober for life.” Tr. at 75.

The cousin described the Individual as a “good, solid person [who is] honest.” Tr. at 78. He stated that he was not aware whether the Individual had used illegal drugs in the past. *Id.* He added that even if the Individual had tried drugs in the past, it would not change his opinion of the Individual. He stated, “I could still rely on him if I needed to count on him for something ... if I needed someone to take care of my son, I wouldn’t have any doubt that [the Individual] would watch him ... He’s a good man.” Tr. at 79.

D. The Individual’s Girlfriend

The Individual’s girlfriend stated that she and the Individual are former co-workers and that they have been together for about two years. Tr. at 83. She stated that she and the Individual talk to each other everyday and see each other two or three times per week. *Id.* The Individual’s girlfriend stated that the Individual stopped drinking alcohol in June 2006 and that the last time she saw him intoxicated was New Year’s Eve 2005. Tr. at 87. She stated that the Individual decided that “he wasn’t going to drink anymore because he didn’t like where his life was going.” Tr. at 85. She added,

He would talk about not wanting to drink. His clearance, his children. And I think he was just looking at life and getting a new direction ... he was going to get on with his life. He wanted to get a home for the kids, because he had been divorced, and he just started shifting his life to that, to getting ahead in life. He started running, he started exercising ... he doesn’t [smoke] anymore ... he just started changing his life, and started gearing towards moving forward.

Tr. at 89-90. The Individual’s girlfriend stated that the Individual “sees things brighter, his attitude is very positive” since he stopped drinking. Tr. at 92. She stated that the Individual has discussed his counseling sessions with her and that “it’s been very positive. He hasn’t complained about it ... he enjoys it.” Tr. at 95.

She testified that she did not believe the Individual would drink alcohol in the future because “he likes who he is now.” Tr. at 96. The Individual’s girlfriend stated that the Individual has been a positive influence on her and that she believed their relationship had improved with his abstinence from alcohol. Tr. at 93, 97. She stated that she was aware that the Individual had tried marijuana in the past and that he had provided false information to DOE regarding his drug use. Tr. at 99, 102. She stated the Individual discussed his falsification of information with her and that “it bothered him ... he felt guilty about it.” Tr. at 102.

E. The Psychiatrist

The Psychiatrist testified regarding his January 2006 evaluation of the Individual. The Psychiatrist stated that he diagnosed the Individual with alcohol dependence based upon his 2005 alcohol use. Tr. at 108-109. The Psychiatrist stated that at the time of the interview the Individual was becoming aware that his alcohol use “could be a problem. But [the Individual]

wasn't willing to say that he was an alcoholic or that...he definitely has a problem." Tr. at 108. The Psychiatrist stated that at the time of the interview, the Individual was not undergoing any treatment and was not showing evidence of rehabilitation or reformation. Tr. at 108, 109. The Psychiatrist recommended as adequate evidence of rehabilitation or reformation that the Individual attend AA or a similar program and be abstinent from alcohol for a period of at least two years. Tr. at 110.

After listening to the testimony of the Individual and the other witnesses at the hearing, the Psychiatrist testified again. He stated that he had not changed his opinion regarding whether the Individual had demonstrated adequate evidence of rehabilitation or reformation. Tr. at 111-112. The Psychiatrist defined "adequate" as "a degree of rehabilitation or reformation where your risk of relapse in the next five years is low. And I define low as 10 percent or less. Relapse for somebody who is alcohol dependent is simply taking one drink." Tr. at 111. The Psychiatrist stated that, given the fact that the Individual had only eight months of abstinence from alcohol at the time of the hearing, his "risk of relapse over the next five years is pretty close to 50 percent or so." Tr. at 113. The Psychiatrist concluded that the Individual was "doing all the right things, [he] just hasn't had enough time." *Id.* Regarding the Individual's marijuana use, the Psychiatrist stated that he "didn't diagnose him as having an illegal drug use disorder" and that there was no indication that the Individual's use was greater than he had admitted. Tr. at 114-115.

III. STANDARD OF REVIEW

The regulations governing the Individual's eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the hearing officer must find that "the grant or restoration of access authorization to the individual would not

endanger the common defense and security and would be clearly consistent with the national interest.” Id. § 710.27(a).

IV. ANALYSIS

The Individual did not dispute the facts cited in the Notification Letter or that those facts raised the security concerns cited in the letter. The only issue to be resolved, then, is whether the Individual has adequately mitigated the security concerns. Below is my analysis of the mitigating evidence the Individual presented with regard to each of the security concerns.

A. Criterion K – Marijuana Use

Turning first to the Criterion K concern raised by the Individual’s past marijuana use, I find that the Individual has adequately mitigated that concern. It is clear that he recognizes the gravity of his actions and has no intention of using illegal drugs in the future. The Individual testified that his most recent illegal drug use occurred in early 2002, over five years ago, and I believed his testimony. The Individual also offered the testimony of witnesses who see him frequently and testified that he does not use drugs. Also, the Psychiatrist testified that he did not diagnose the Individual with a drug use disorder.

B. Criterion F – Falsification of Information

The Criterion F concern – regarding the Individual’s falsification of information about his past marijuana use – is more difficult to mitigate. Criterion F concerns involve the future honesty and candor of an individual. In order to adequately mitigate these concerns, an individual has the difficult burden of convincing the hearing officer that he can be trusted to be honest and forthright with DOE in the future.

I am concerned by the Individual’s explanation that at least part of the reason he did not disclose his 2002 marijuana use was that he was embarrassed by his use and concerned about the possible ramifications of disclosing the use to the DOE. As mentioned above, the DOE security program is based on trust. The DOE relies on its clearance-holders to report unfavorable information regardless of whether they are embarrassed by it or unsure of the consequences. When an individual fails to report unfavorable information, it leads the DOE to question whether that individual can be trusted to report any such information in the future.

There is no dispute that the Individual provided false information on his 2005 QNSP and to the Psychologist regarding his past illegal drug use. The Individual stated that he did not intentionally disregard DOE policies, but rather did not want to disclose the use because he thought it might make it appear that he had a drug problem even though he does not “have an issue with drugs.” This was a serious error and demonstrates, at a minimum, a lapse in judgment by the Individual.

Based on the evidence in the record, and my impression of the Individual’s character, truthfulness, and reliability, I believe the Individual’s incorrect answers on the 2005 QNSP about his marijuana use were a lapse in otherwise good judgment. The Individual himself disclosed the

marijuana use to the Psychiatrist. In addition, he has made several significant lifestyle changes and has emphasized the importance of honesty in his life. Furthermore, there is no evidence in the record of any other instances of the Individual being dishonest or falsifying information. However, the DOE has known about the false answers on the QNSPs for a relatively short time – approximately one year as of the date of the hearing.

Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing, Case No. VSO-0499*, 28 DOE ¶ 82,850 (2002). In most cases in which hearing officers have concluded that doubts about an individual's judgment and reliability raised by evidence of falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the time period has allowed individuals to establish a pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, hearing officers have generally determined that the individual was not eligible to hold an access authorization. *See, e.g., Personnel Security Hearing, Case No. VSO-0448*, 28 DOE ¶ 82,816 (2001) (11 months not sufficient to mitigate four-year period of deception).

In this case, the Individual knowingly chose to provide false answers about his past marijuana use on the 2005 QNSP and to the Psychologist because of the possible consequences. The Individual maintained the falsehood for approximately one year, until his January 2006 psychiatric evaluation. In view of the relatively short period of time the DOE has known about the Individual's falsification, I cannot find that he has established a sufficient pattern of responsible behavior adequate to mitigate the Criterion F concern.

C. Criteria H and J – Alcohol Use

The Individual acknowledged at the hearing that he had an alcohol problem and stated that he was working to address it. He testified that he was abstinent from alcohol for approximately nine months as of the date of the hearing. I believe that the Individual testified candidly regarding his abstinence date and his future intentions to remain abstinent from alcohol and continue participating in AA. I am convinced the Individual has taken steps to address his alcohol problem. The Individual stopped drinking alcohol in June 2006 and, after realizing that he needed assistance in maintaining his sobriety, sought out counseling in November 2006.* According to the Individual, his life has changed for the better since he stopped drinking alcohol and he is committed to maintaining his abstinence. Additionally, the Psychiatrist was optimistic about the steps the Individual has taken to address his alcohol problem. The witnesses at the hearing testified as to what the Individual told them regarding his abstinence date, the Individual's commitment to his sobriety and the AA program, and the lifestyle changes the Individual has made since becoming abstinent from alcohol. His witnesses, people who interact with the Individual on a regular basis, also testified as to their own observations of the Individual's alcohol consumption, corroborating the Individual's testimony that he no longer

* The Individual submitted a report from his counselor dated February 5, 2007. In that report, the counselor states that the Individual attended 40 counseling sessions as part of his enrollment in the Intensive Outpatient Treatment Program (IOTP). The counselor also states that the Individual is participating in the SMART program and has attended some AA meetings. The counselor's report is marked as "Exhibit IV" in the record.

drinks alcohol. Based on the testimony at the hearing and my own impressions of the Individual, I believe that he is showing progress in addressing his alcohol problem.

I am unable to find, however, that the Individual has brought forward sufficient evidence to mitigate the Criteria H and J concerns. My conclusion is based on the Individual's significant alcohol use over several years, the Psychiatrist's diagnosis of alcohol dependence, and the Individual's relatively short period of abstinence from alcohol and even shorter period of involvement in the AA program. The Psychiatrist testified that the Individual's current risk of relapse was close to fifty percent. In my view, that risk is too high and, therefore, unacceptable. The Individual himself acknowledged that, although he has made the initial steps toward treating his alcohol problem, "it's a lengthy process" and he still has a long way to go in his recovery. Based on this information, I cannot find that the demonstrated period of abstinence and treatment is sufficient to mitigate the security concerns in this case. In that regard, I agree with the Psychiatrist's testimony that this period of abstinence and treatment is not yet sufficient to show adequate rehabilitation or reformation.

As the foregoing indicates, the security concerns set forth in the Notification Letter under Criteria H and J regarding the Individual's alcohol use have not been adequately mitigated.

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criteria F, H, J and K. I also find sufficient evidence in the record to mitigate the concerns raised under Criterion K. However, I am unable to conclude at this time that the Criteria F, H and J concerns have been mitigated. Therefore, I cannot conclude that granting the Individual an access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual should not be granted an access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: April 13, 2007